In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1596

GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on February 20, 1970. The petition for a writ of certiorari was filed on May 21, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1) and 25 U.S.C. 70S(c).

QUESTION PRESENTED

Whether the Indian Claims Commission Act permits suit by the Tribe for allegedly inadequate administrative, educational and health services to the Indians in the absence of any treaty or agreement providing for such services.

STATEMENT

The petitioner asserted in a conclusory fashion before the Indian Claims Commission that the United States had not provided adequate administrative, educational or health services to the petitioners. No treaty or contract calling for these services was alleged. Neither was any specific act of misconduct cited.

The Indian Claims Commission dismissed the petition for lack of jurisdiction under the Indian Claims Commission Act. The Court of Claims affirmed on the ground that "there was no treaty, agreement, order or statute which expressly obligated the United States to perform these services" (Pet. App. A, p. 6).

ARGUMENT

The decision below is correct and raises no question warranting review by this Court. There never was any agreement between the Tribe and the government concerning administrative, educational or health services. The Court of Claims has consistently held that there can be no recovery under Section 2(5) of the Indian Claims Commission Act, 25 U.S.C. 70a (5), covering fair and honorable dealings, in the rendering of gratuitous services such as these in the

absence of some duty or obligation. *Oneida Tribe of Indians of Wisc.* v. *United States*, 165 C.Cls. 487, 493-494, certiorari denied, 379 U.S. 946; *Gila River Pima-Maricopa Indian Community* v. *United States*, 135 C.Cls. 180, 140 F.Supp. 776, 780-781. There was no claim under any other section of the Act.[1]

Although neither the Commission nor the Court of Claims reached the issue, the decision below is also correct because the claims are really for accumulated injuries to individual Indians. These are not cognizable under the Indian Claims Commission Act. *Absentee Shawnee Tribe of Oklahoma, et al.* v. *United States*, 165 C.Cls. 510; *Cherokee Freedmen, et al.* v. *United States*, 161 C.Cls. 787.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JUNE 1970.

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[1] No specific tortious acts were cited so as to give jurisdiction under Section 2(2) of the Indian Claims Commission Act, 25 U.S.C. 70a(2).

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